

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF NEW YORK

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4
5 UNITED STATES OF AMERICA,

6 -versus-

06-CR-154

7 LEWIS LEE,

8 Defendant.
9

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11 TRANSCRIPT OF CHANGE OF PLEA PROCEEDINGS
12 held in and for the United States District Court, Northern
13 District of New York, at the Federal Building and
14 Courthouse, 15 Henry Street, Binghamton, New York, on
15 WEDNESDAY, May 31, 2006, before the HON. THOMAS J. McAVOY,
16 Senior United States District Court Judge, PRESIDING.
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1 APPEARANCES:

2
3 FOR THE GOVERNMENT:

4 UNITED STATES ATTORNEY'S OFFICE

5 BY: MIROSLAV LOVRIC, AUSA

6 Binghamton, New York

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9 FOR THE DEFENDANT:

10 FEDERAL PUBLIC DEFENDER'S OFFICE

11 BY: LISA PEEBLES, AFPD

12 Syracuse, New York

1 THE CLERK: United States of America versus
2 Lewis Lee, 2006-CR-154. Please come forward and state
3 appearances for the record.

4 MR. LOVRIC: Miroslav Lovric for the
5 government. Good morning, your Honor.

6 THE COURT: Morning, Mr. Lovric.

7 MISS PEEBLES: Lisa Peebles appearing on
8 behalf of Mr. Lewis Lee. Mr. Lee is also present.

9 THE COURT: Morning, Miss Peebles.

10 THE DEFENDANT: My name is Lewis Jeffery Lee.
11 (Defendant was duly sworn).

12 THE COURT: All right. As I understand it,
13 Miss Peebles, this morning your client, Mr. Lee, wishes to
14 change his plea and enter a plea of guilty to counts one
15 through four of indictment 06-CR-154.

16 Is that your understanding?

17 MISS PEEBLES: It is, Judge.

18 THE COURT: Mr. Lovric, is that your
19 understanding?

20 MR. LOVRIC: Yes, your Honor.

21 THE COURT: I thought Mr. Lee was indicted up
22 in Chenango County.

23 MISS PEEBLES: He has a state court case
24 pending, Judge, as well. That's true.

25 THE COURT: Is that right?

1 MR. LOVRIC: Yes, Judge, he does. He has -- I
2 mean, the charges there deal with state charges of statutory
3 rape, I believe.

4 THE COURT: I read all of that. You can't
5 believe what you read in the newspaper.

6 MISS PEEBLES: Those allegations pertain to
7 accusations from 2005, separate from this. There may be some
8 overlap with one or two of the charges. He's pleading here
9 today and they'll have to sort that out in state court but
10 I'm in communication with the attorney that's representing
11 him and he's scheduled to appear on Friday in front of the
12 county court judge and we're hoping that something can be
13 worked out in light of his plea, but there have been no
14 promises that have been made in connection with that.

15 THE COURT: Okay. It seemed interesting to
16 me. I've been through the St. Patrick's Day Four. I know
17 how that works. All right.

18 Mr. Lee, in a few moments, I'm going to be
19 asking you some questions in order to learn if you're
20 pleading guilty freely and voluntarily with an understanding
21 of the charges and consequences. I'll be asking you if
22 you're under the influence of any substances such as alcohol,
23 narcotics or medication which would in any way interfere with
24 your ability to understand the charges and the consequences.
25 I'm going to be asking you if anybody has made any promises

1 of leniency to you or threats of force against you to induce
2 you to plead guilty. I'm going to be asking you something
3 about what you did in the case so the Court can establish
4 that there's a factual basis for accepting and entering your
5 plea and I'm going to ask you questions about your personal
6 history and background and I want to advise you if your
7 answers are not truthful, they may later be used against you
8 in a prosecution for perjury or for making a false statement.

9 Do you understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Okay. Before I ask you those
12 questions and before the clerk takes your plea, I want to
13 tell you about some rights that you have in connection with
14 this matter: First of all, you have the right to persist in
15 your original plea of not guilty to all four counts of the
16 indictment. You have the right to a speedy and public trial
17 by an impartial jury of 12 persons or to a trial by the Court
18 alone if you were to waive or give up your right to a jury
19 trial.

20 Upon such a trial you would be presumed to be
21 innocent under the law and the burden would be upon the
22 government to establish your guilt beyond a reasonable doubt
23 to the satisfaction of all 12 jurors or to the satisfaction
24 of the Court, if you waived a jury trial.

25 At such a trial, you'd have the right to

1 representation by counsel. You'd have the right to confront,
2 that is, to see and hear any witnesses sworn against you and
3 to cross-examine them. You'd have the right to remain silent
4 or to testify in your own behalf but you couldn't be
5 compelled to testify against yourself or to testify at all
6 and your silence couldn't be held against you in any way nor
7 could any inferences of guilt be drawn against you if you
8 decided not to testify. You'd have the right to use the
9 subpoena or other processes of the Court, to compel witnesses
10 to attend the trial and testify and to obtain any documentary
11 or other evidence you might wish to offer in your own
12 defense.

13 Now, if the Court accepts your plea of guilty
14 here this morning, you're going to waive or give up all those
15 rights, there won't be a trial of any kind and the Court will
16 have the same power to sentence you as if you had been found
17 guilty after a trial on the counts to which you're pleading.

18 Did you speak with Miss Peebles about the four
19 counts in the indictment?

20 THE DEFENDANT: Yes, I did, your Honor.

21 THE COURT: Have you read the indictment
22 yourself?

23 THE DEFENDANT: I have, your Honor.

24 THE COURT: Okay. Did she explain those
25 counts to you?

1 THE DEFENDANT: Yes, your Honor, she did.

2 THE COURT: Do you understand them?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right. Did you also speak
5 with her about the consequences of pleading guilty?

6 THE DEFENDANT: Yes.

7 THE COURT: And potential sentences involved?

8 THE DEFENDANT: Yes.

9 THE COURT: She explain those to you?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you understand them?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Court also wants to advise you
14 that your plea of guilty constitutes a waiver or giving up of
15 your right against self-incrimination and I want to warn you
16 not to plead guilty unless you're, in fact, guilty of the
17 charges made against you in the indictment. I guess it's an
18 information not an indictment.

19 So, do you still wish to plead guilty?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right. Madam clerk.

22 THE CLERK: As to the indictment 2006-CR-154,
23 United States of America versus Lewis Lee, the grand jury
24 charges as to count one, transporting a minor in interstate
25 commerce to engage in sexual activity. Between in and about

1 March 6, 2006, and continuing through in and about April of
2 2006, in the Northern District of New York and elsewhere,
3 defendant Lewis Lee, knowingly transported a minor whose
4 identity is known to the grand jury and who was at the time
5 under the age of 18 years, in interstate commerce from the
6 State of New York into and through several other states in
7 the United States with intent that the minor engage in sexual
8 activity for which conduct defendant can be charged with a
9 criminal offense pursuant to state statutes and other federal
10 statutes. In violation of Title 18, United States Code,
11 Section 2423(a).

12 Mr. Lee, how do you plead to count one?

13 THE DEFENDANT: Guilty.

14 THE CLERK: As to count two, traveling in
15 interstate commerce with intent to engage in illicit sexual
16 conduct with a minor. Between in and about March of 2006 and
17 continuing through in and about April of 2006, in the
18 Northern District of New York and elsewhere, defendant Lewis
19 Lee did travel in interstate commerce for the purpose of
20 engaging in illicit sexual conduct with a minor under 18
21 years of age and whose identity is known to the grand jury.
22 In violation of Title 18, United States Code, Section
23 2423(b).

24 Mr. Lee, how do you plead to count two?

25 THE DEFENDANT: Guilty.

1 THE CLERK: As to count three, persuading a
2 minor to travel in interstate commerce with intent to engage
3 in illicit sexual conduct with a minor. Between in and about
4 March 6, 2006, and continuing through in and about April of
5 2006, in the Northern District of New York and elsewhere,
6 defendant Lewis Lee knowingly persuaded, induced, and enticed
7 a minor whose identity is known to the grand jury and who was
8 at that time under the age of 18 years, to travel in
9 interstate commerce to engage in sexual activity for which
10 conduct defendant can be charged with a criminal offense
11 pursuant to state statutes and other federal statutes. In
12 violation of Title 18, United States Code, Section 2422(a).

13 Mr. Lee, how do you plead to count three?

14 THE DEFENDANT: Guilty.

15 THE CLERK: And to count four, travel in
16 interstate commerce with intent to engage in conduct that
17 violates an order of protection. Between in and about March
18 of 2006, and continuing through April 2006, in the Northern
19 District of New York and elsewhere, defendant Lewis Lee did
20 travel in interstate commerce with the intent to engage in
21 conduct that violated an order of protection issued in
22 Chenango County, New York, on or about January 31, 2006 which
23 order prohibited contact, communication, physical proximity,
24 and other forms of conduct by defendant as to several
25 individuals whose identities were known to the grand jury and

1 defendant did engage in such conduct in violation of the
2 order of protection. In violation of Title 18, United States
3 Code, Section 2262(a)(1).

4 Mr. Lee, how do you plead to count four?

5 THE DEFENDANT: Guilty.

6 THE COURT: All right. Mr. Lee, would you
7 please state your full name for us once again.

8 THE DEFENDANT: My full name is Lewis Jeffery,
9 spelled J-E-F-F-E-R-Y, sir, Lee. L-E-E.

10 THE COURT: Okay. How old are you?

11 THE DEFENDANT: I'm 54 years old.

12 THE COURT: What's your date of birth?

13 THE DEFENDANT: 9/24/51.

14 THE COURT: Married?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Have any children?

17 THE DEFENDANT: Two.

18 THE COURT: What are their age and gender?

19 THE DEFENDANT: Both girls. One would be 34
20 this July and the other will be 31 this December.

21 THE COURT: All right. And tell me about your
22 educational background?

23 THE DEFENDANT: General studies in high
24 school, plus two years of votech training and machinist
25 training and three years of theology study.

1 THE COURT: Okay. And tell me a little bit
2 about your work history.

3 THE DEFENDANT: Thirty years of seniority with
4 General Motors Corporation, retired. Worked road
5 construction, worked general construction. And upon retiring
6 from General Motors, was a home improvements contractor for
7 two years.

8 THE COURT: Okay. Have you had any alcohol or
9 narcotics in the past 48 hours?

10 THE DEFENDANT: No, sir.

11 THE COURT: Are you currently or have you
12 recently been under the care of any physician or psychiatrist
13 for any physical or mental condition?

14 THE DEFENDANT: I take blood pressure
15 medicine, your Honor.

16 THE COURT: You have elevated blood pressure?

17 THE DEFENDANT: I take a diuretic for fluids.
18 I get a pill for that, I'm not sure what it is.

19 THE COURT: Some kind of hydrochloride?

20 THE DEFENDANT: Some pill to help me take the
21 water out of my system.

22 THE COURT: What are you on for high blood
23 pressure besides the dehydrating pill?

24 THE DEFENDANT: They're giving me the generic
25 drug of the brand Caylick (phonetic).

1 THE COURT: Okay. Does ingestion of those
2 medications in any way interfere with your ability to
3 understand the charges and consequence?

4 THE DEFENDANT: I do not think so, sir.

5 THE COURT: Okay. Did you hire Miss Peebles
6 to represent you in this case or was she appointed by the
7 Court?

8 THE DEFENDANT: I believe you were appointed
9 by the Court.

10 THE COURT: Okay. Has she advised you of your
11 rights?

12 THE DEFENDANT: Yes, she has.

13 THE COURT: Is there anything you'd like to
14 ask me about your rights this morning?

15 THE DEFENDANT: No, sir. I understand my
16 rights.

17 THE COURT: Are you satisfied with what Miss
18 Peebles has done for you so far?

19 THE DEFENDANT: I'm very much satisfied. I
20 thanked her this morning already for helping me.

21 THE COURT: Has Miss Peebles, Mr. Lovric or
22 any public official or anyone made any promises to you that
23 you'd be treated leniently in exchange for your plea of
24 guilty in this case?

25 THE DEFENDANT: No.

1 THE COURT: Has anybody threatened you with
2 the use of force to induce you to plead guilty?

3 THE DEFENDANT: No, sir.

4 THE COURT: Are you pleading guilty freely and
5 voluntarily?

6 THE DEFENDANT: Of my own free will.

7 THE COURT: Are you currently on probation?

8 THE DEFENDANT: No, sir.

9 THE COURT: Must be some kind of a situation,
10 pretrial status in Chenango County?

11 MISS PEEBLES: He never made bail over in
12 Chenango County.

13 THE COURT: So you're released on bail?

14 THE DEFENDANT: No, sir.

15 MISS PEEBLES: He was writtied over here so
16 he's been borrowed from the state. He never made bail over
17 in the state court.

18 THE COURT: I guess the status would be he's
19 being held to answer to charges in Chenango County?

20 MISS PEEBLES: Correct.

21 THE COURT: Mr. Lovric, does the government
22 have sufficient evidence to prove Mr. Lee guilty beyond a
23 reasonable doubt of the charges in counts one through four?

24 MR. LOVRIC: Yes, we do, Judge.

25 THE COURT: What would you prove if the case

1 went to trial?

2 MR. LOVRIC: Your Honor, if the case went to
3 trial, we would call a number of witnesses to testify. In
4 addition, we would also produce and introduce documentary
5 evidence, as well as several other physical type evidence
6 that would be introduced. The types of witnesses that we
7 would call would include lay witnesses, including the
8 15-year-old victim minor in this case. We would also call a
9 number of other lay witnesses being adults who would have
10 relevant information regarding the conduct. We would also
11 call a number of FBI agents, as well as state law enforcement
12 officers.

13 In our view, the evidence would show that the
14 conduct that Mr. Lee has pled guilty to today dealt with
15 conduct and activities that occurred between March of 2006
16 and into and through April 17 of 2006 when he was, in fact,
17 arrested by the FBI. We would prove that in March of 2006,
18 Mr. Lee at that time was living and residing in the State of
19 Maryland. He had moved back to Maryland from New York State
20 somewhere approximately in the February 2006 time frame.
21 Mr. Lee in March of 2006 traveled from the State of Maryland
22 to New York State to Chenango County and at that time engaged
23 in contact with a 15-year-old minor. The 15-year-old minor
24 that he contacted was a person as to whom an issue -- an
25 order of protection had been issued on January 31 of 2006 by

1 a Chenango County Court Judge. When Mr. Lee traveled from
2 Maryland to New York State, he had personally been served in
3 January 2006 with the order of protection in court. That
4 order ordered him not to have any contact, direct or
5 indirect, personal or otherwise, with the 15-year-old minor
6 or with the family that the minor resided with in Chenango
7 County. Mr. Lee -- after being served that order of
8 protection in January 2006, then in March of 2006 traveled
9 from Maryland to New York State. He not only contacted the
10 15-year-old minor but he discussed with the minor and
11 encouraged her to leave with him from the State of New York
12 and to accompany him out of the State of New York.

13 We would prove that the minor did, in fact,
14 accompany Mr. Lee out of New York State. Mr. Lee transported
15 the minor in his truck that he drove up from Maryland. He
16 then drove the minor to Pennsylvania initially. He stayed
17 with the minor very, very briefly for one day in
18 Pennsylvania. Thereafter, he transported the minor through
19 several other states, including West Virginia, including
20 Kansas, Wyoming, and a number of other states throughout the
21 country. We would prove that during the time frame that the
22 minor was in Mr. Lee's custody, that Mr. Lee did engage in
23 sexual acts, including sexual intercourse with the
24 15-year-old minor. We would prove that the time frame that
25 the minor was in Mr. Lee's custody was approximately about a

1 month time frame. During that time, Mr. Lee was transporting
2 the minor through several states and was finally apprehended
3 by the FBI and the Maryland State Police in the Maryland/West
4 Virginia area. We would prove that the conduct that Mr. Lee
5 engaged in with the minor, the sexual conduct, that conduct
6 he could be prosecuted for, it is in violation of several
7 statutes under state law, including endangering the welfare
8 of a minor for which he could be prosecuted. We would prove
9 that Mr. Lee knew the minor's age to be 15 years old at the
10 time based upon, you know, prior, prior knowledge of the
11 minor and her family.

12 Those are the acts and conduct that we would
13 prove, your Honor.

14 THE COURT: All right. You probably could
15 establish, could you not, Chenango County is in the Northern
16 District of New York?

17 MR. LOVRIC: Yes.

18 THE COURT: Mr. Lee, did you hear what
19 Mr. Lovric said about your conduct in this case?

20 THE DEFENDANT: Yes.

21 THE COURT: Is that what you did?

22 THE DEFENDANT: Basically.

23 THE COURT: Well, is there something that I
24 should know about?

25 THE DEFENDANT: Sir --

1 THE COURT: This isn't the time to talk about
2 anything to do with sentencing.

3 THE DEFENDANT: No.

4 THE COURT: Has to do with your conduct.

5 THE DEFENDANT: No. The conduct -- the
6 context of it is extremely accurate, sir. The only thing
7 that is in my mind is I didn't spend a day in Pennsylvania.

8 THE COURT: Part of the day?

9 THE DEFENDANT: Just part of the day.

10 THE COURT: All right.

11 THE DEFENDANT: That was all, sir.

12 THE COURT: Not 24 hours?

13 THE DEFENDANT: No, sir.

14 THE COURT: How long did you spend?

15 THE DEFENDANT: What's it take to drive across
16 Pennsylvania?

17 THE COURT: Seven hours.

18 THE DEFENDANT: Then that would be the time,
19 sir.

20 THE COURT: That's a guess on my part. I'm
21 not sure. It's been a long time.

22 THE DEFENDANT: There was -- there was a brief
23 stop at a motel to pick up luggage and then we proceeded,
24 sir.

25 THE COURT: Okay. All right. Now,

1 Mr. Lovric, would you please advise Mr. Lee and the Court
2 what the maximum or any minimum penalty would be for the
3 count involved?

4 MR. LOVRIC: Yes, Judge. As to count one, the
5 maximum penalty is 30 years. There's a mandatory minimum of
6 five years. As to count two, there's no mandatory minimum
7 but there's a maximum of 30 years. As to count three,
8 there's a mandatory, excuse me, there's no mandatory minimum
9 but a possible maximum of 20 years. As to count four, the
10 possible maximum penalty is 5 years. There's no mandatory
11 minimum.

12 As to each of the counts, the Court has the
13 ability to impose a maximum fine of \$250,000. As to each of
14 the four counts, there's a special assessment of \$100 per
15 count, bringing the total to \$400. And as to each of the
16 counts, there's a supervised release term possible of up to
17 five years and if the defendant were to violate any terms of
18 supervised release, the Court would have the power to add an
19 additional three years of imprisonment. I do not believe or
20 have any reason to think that Mr. Lee is anything but a US
21 Citizen. If for some reason he were not to be a US Citizen,
22 then he could be deported based upon a conviction of any of
23 these offenses.

24 Those are the possible maximum penalties.

25 THE COURT: All right. Mr. Lee, the Court

1 must advise you also under and pursuant to certain sentencing
2 guidelines adopted by the United States, which formally were
3 mandatory but now must be considered by the Court in the
4 sentencing factor, my discretion in sentencing you thereby
5 becomes limited and I must enforce the law as it stands
6 today, but sometimes the Court can depart from those
7 guidelines and sentence you above them, below them or even
8 outside the guidelines depending upon the facts, the
9 circumstances and the law that's presented to the Court at or
10 about the time of sentencing.

11 So, do you understand what I just said about
12 the sentencing guidelines?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. Mr. Lovric, have you
15 done a preliminary calculation?

16 MR. LOVRIC: Yes, Judge. We believe that the
17 applicable guideline provision is 2G1.3. We believe that all
18 four counts would be grouped under the grouping provisions.
19 Under 2G1.3, the base offense level is a 24. We believe that
20 there would be a 2 point enhancement for abuse of trust
21 and/or undue influence under Section 2G1.3(b)2 or 3B1.3. We
22 also believe there would be a two point enhancement for the
23 commission of a sexual act in connection with the conduct.
24 We, therefore, think that the total offense level would be a
25 28. If the Court grants acceptance to Mr. Lee for the plea,

1 then it would bring his total offense level down to a 25 from
2 a 28. I think Mr. Lee's criminal history would be at the
3 lower end, one, depending on what happens in the state matter
4 is possibly a two, but it will be at the lower end of the
5 guideline range.

6 At offense level 28, criminal history 1, the
7 range is 78 to 97 months and then at the highest criminal
8 history of 6, it's 140 to 175 months. At offense level 25,
9 criminal history 1, the guideline range is 57 to 71 months.
10 At the highest level of criminal history 6, it's 110 to 137
11 months and then obviously the five year mandatory minimum,
12 that being 60 months, would override any guideline range that
13 was lower than the 60 months.

14 THE COURT: All right. Mr. Lee, now that
15 you've heard about the statutory sentence and the guidelines,
16 do you still wish to plead guilty?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Are you pleading guilty because
19 you're guilty?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Miss Peebles, would you please
22 tell us about your background and experience in handling
23 matters of this kind?

24 MISS PEEBLES: Yes, Judge. Just one quick
25 point, if I may, with regard to the guideline calculation.

1 THE COURT: Sure.

2 MISS PEEBLES: We're not in agreement that
3 there was --

4 THE COURT: Enhancement.

5 MISS PEEBLES: For abuse of trust but aside
6 from that --

7 THE COURT: Sure. Well, we can have
8 information presented to the Court. Now, post Booker/Fanfan,
9 the Court becomes the person to consider that information,
10 make a determination based upon the preponderance of the
11 evidence as to whether or not those enhancements should apply
12 or not apply. The Court will be totally open to any
13 information anyone presents to me on that topic.

14 MISS PEEBLES: Yes, Judge. Thank you.
15 Background has been, I've been with the Office of Federal
16 Public Defender since 1999. It's been almost seven years and
17 prior to that, Judge, I was admitted to practice in the
18 Northern District of New York and handled a number of CJA
19 cases from 1993 to 1999.

20 THE COURT: All right. Approximately how much
21 time have you spent defending Mr. Lee against these charges?

22 MISS PEEBLES: Approximately 25 hours, your
23 Honor.

24 THE COURT: Okay. Have you had what you
25 believe to be adequate discovery of the government's case?

1 MISS PEEBLES: I have, your Honor.

2 THE COURT: Have you advised your client of
3 his rights, nature of the charges and consequences of
4 pleading guilty?

5 MISS PEEBLES: Yes, I have.

6 THE COURT: Have you made any promises or
7 threats to induce him to plead guilty?

8 MISS PEEBLES: No, I have not.

9 THE COURT: Are you satisfied that he's
10 pleading guilty freely and voluntarily with an understanding
11 of the charges and the consequences?

12 MISS PEEBLES: I am, your Honor.

13 THE COURT: Do you know of any defense that
14 would prevail if the case went to trial?

15 MISS PEEBLES: I do not.

16 THE COURT: Do you know of any reason why he
17 should not plead guilty?

18 MISS PEEBLES: No, your Honor.

19 THE COURT: Based on the foregoing the Court
20 will find Mr. Lee pled guilty freely and voluntarily; that he
21 is and was competent to enter such a plea; that he
22 understands the charges against him and the consequences of
23 pleading guilty; that there is and was a basis, in fact, for
24 the Court accepting and entering the plea.

25 The Court will direct the Probation Department

1 to prepare and submit a presentence report.

2 The Court will set sentencing for Thursday,
3 September 28, at 9:30 AM in Binghamton, New York.

4 Now, is Mr. Lee going to be transported into
5 state custody when this matter is over?

6 MISS PEEBLES: We're trying to work that out,
7 Judge.

8 THE COURT: Either state or federal custody.

9 MISS PEEBLES: We're hoping he'll be
10 transferred into federal custody at some point in the near
11 future. It has yet to be determined.

12 THE COURT: Is there anything further?

13 MR. LOVRIC: No, Judge.

14 MISS PEEBLES: No, Judge.

15 THE COURT: Okay. Court stands adjourned in
16 this matter.

17 (Court stands adjourned)
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C E R T I F I C A T I O N

I, VICKY A. THELEMAN, RPR, CRR, United States Court Reporter in and for the United States District Court, Northern District of New York, do hereby certify that I attended at the time and place set forth in the heading hereof; that I did make a stenographic record of the proceedings had in this matter and cause the same to be transcribed; that the foregoing is a true and correct copy of the same and the whole thereof.

VICKY A. THELEMAN, RPR, CRR
United States Court Reporter
US District Court - NDNY

Dated: November 6, 2006.

VICKY ANN THELEMAN, RPR, CRR
UNITED STATES DISTRICT COURT